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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 JOHN HO, an individual

12 Plaintiff,

13 vs.

14 EL PASEO PLAZA PARTNERS, LLC,
a limited liability company

15 Defendants.
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18
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Case No.: 8:23-cv-1947

COMPLAINT FOR

**(1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**

**(2) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

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I.
SUMMARY

1. This is a civil rights action by plaintiff John Ho (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding shopping center bearing the legal address of 3544 E Chapman Ave, Orange, CA 92869-3815, Orange County, and encompassing the entire exterior parking lot identified as APN 094-091-29 where the business the “Poki Ya” operates (the “Property”). Plaintiff frequents the area for dining, shopping and entertainment as the area is near the beaches and shops of Long Beach. In this particular instance, Plaintiff desired to patronize the “Poki Ya” restaurant located on the property.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes¹ against the owner of the property (“Defendant”).

II.
JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.
VENUE

6. All actions complained of herein take place within the jurisdiction of the

¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

1 United States District Court, Central District of California, and venue is invoked
2 pursuant to 28 U.S.C. § 1391(b), (c)

3 **IV.**

4 **PARTIES**

5 **7.** On information and belief, Plaintiff alleges that Defendant is or was at
6 the time of the incident, the owner, operator, lessor and/or lessee of the Property, and
7 consist of a person (or persons), firm, company, and/or corporation.

8 **8.** Plaintiff is a T-12 paraplegic, and as a result is unable to walk or stand,
9 and thus requires a use of a wheelchair at all times when traveling in public. Plaintiff
10 is “physically disabled” as defined by all applicable California and United States laws,
11 and a member of the public whose rights are protected by these laws. Plaintiff is a
12 resident of Los Angeles County, California. Plaintiff is considered a high frequency
13 litigant as that term is defined in California Code of Civil Procedure § 425.55(b). In
14 the twelve months preceding the filing of this complaint, Plaintiff filed fifteen (15)
15 other construction accessibility related claims (not including this one).

16 **V.**

17 **FACTS**

18 **9.** On January 4, 2022, Plaintiff patronized the Property. The Property is a
19 sales or retail establishment, open to the public, which is intended for nonresidential
20 use and whose operation affects commerce.

21 **10.** Plaintiff visited the Property and encountered barriers (both physical and
22 intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and
23 enjoy the goods, services, privileges and accommodations offered at the facility. To
24 the extent known by Plaintiff, the barriers at the Property included, but are not limited
25 to the following:

- 26
27 a. Parking spaces designated as accessible and accompanying access aisles
28 have slopes and/or cross slopes that exceed 2.0%. Without a level

1 parking space, it is difficult for Plaintiff to unload/transfer from a vehicle
2 as his wheelchair rolls.

- 3 b. To access the sidewalks and stores, Plaintiff must traverse up a built-up
4 curb ramp that is too steep. To the extent that the curb ramp is intended
5 to be a ramp, it does not have the necessary railings for Plaintiff to safely
6 maneuver up and down.

7 **11.** These barriers to access are listed without prejudice to Plaintiff citing
8 additional barriers to access after inspection by Plaintiff's access consultant, per the
9 9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
10 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
11 Property.

12 **12.** Plaintiff thus experienced difficulty and discomfort as a result of the
13 accessible barriers he encountered. Although he would like to return to the Property
14 to patronize the convenience store at the Property, he continues to be deterred from
15 visiting the Property because of the future threats of injury created by these barriers.
16 Plaintiff often frequents the area as he enjoys the shops, beaches and dining offered in
17 Orange. Plaintiff would return to the Property once the barriers have been corrected
18 because he enjoys the Poki Ya located on the Property. Within 6 months of the
19 correction of any barriers, Plaintiff would return to the Property to not only patronize
20 the stores on the Property, but to also return to ensure that the Property is fully
21 accessible to him.

22 **13.** On information and belief, Plaintiff alleges that Defendant knew that
23 these elements and areas of the Property were inaccessible, violate state and federal
24 law, and interfere with (or deny) access to the physically disabled. Moreover,
25 Defendant has the financial resources to remove these barriers from the Property
26 (without much difficult or expense), and make the Property accessible to the
27 physically disabled. To date, however, the Defendant refuses to remove those
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1 barriers.

2 **14.** On information and belief, Plaintiff alleges that at all relevant times,
3 Defendant has possessed and enjoyed sufficient control and authority to modify the
4 Property to remove impediments to wheelchair access and to comply with the
5 Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations.
6 Defendant has not removed such impediments and have not modified the Property to
7 conform to accessibility standards.

8 **VI. FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW**
9 **INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE**
10 **AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL**
11 **CODE SECTION 51(f)**

12 15. Plaintiff incorporates the allegations contained in paragraphs 1 through
13 14 for this claim and incorporates them herein.

14 16. At all times relevant to this complaint, California Civil Code § 51 has
15 provided that physically disabled persons are free and equal citizens of the state,
16 regardless of disability or medical condition:

17 All persons within the jurisdiction of this state are free and equal, and
18 no matter what their sex, race, color, religion, ancestry, national
19 origin, disability, or medical condition are entitled to the full and
20 equal accommodations, advantages, facilities, privileges, or services
21 in all business establishments of every kind whatsoever. Cal. Civ.
22 Code § 51(b).

23 17. California Civil Code § 52 provides that the discrimination against
24 Plaintiff on the basis of his disabilities constitutes a violation of the anti-
25 discrimination provisions of §§ 51 and 52.

26 18. Defendant's discrimination constitutes a separate and distinct violation of
27 California Civil Code § 52 which provides that:
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19. Plaintiff continues to be deterred from visiting the Subject Property based upon the existence of the accessible barriers. In addition to the instance of discrimination occurring in January 2022, Plaintiff is entitled to \$4,000.00 in statutory damages for each additional occurrence of discrimination under California Civil Code § 52.

21. The actions and omissions of Defendant as herein alleged constitute a denial of access to and use of the described public facilities by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. As a proximate result of Defendant's action and omissions Defendant has discriminated against Plaintiff in a violation of Civil Code §§ 51 and 51.

**SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

1 22. Plaintiff incorporates the allegations contained in paragraphs 1 through
2 21 for this claim and incorporates them herein.

3 23. As part of the Americans with Disabilities Act of 1990 (“ADA”),
4 Congress passed “Title III – Public Accommodations and Services Operated by
5 Private Entities.” 42 U.S.C. § 12181 et seq. The Property is one of the “private
6 entities” which are considered “public accommodations” for purposes of this title,
7 which includes any “restaurant, bar, or other sales or rental establishment serving food
8 or drink.” § 301(7)(B).

9 24. The ADA states that “[n]o individual shall be discriminated against on
10 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
11 privileges, advantages, or accommodations of any place of public accommodation by
12 any person who owns, leases, or leases to, or operates a place of public
13 accommodation.” 42 U.S.C. § 12182.

14 25. The acts and omissions of Defendant set forth herein were in violation of
15 Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 CFR
16 Part 36 *et seq.*

17 26. On information and belief, Plaintiff alleges that the Property was
18 constructed or altered after January 26, 1993 thus triggering requirements for removal
19 of barriers to access for disabled persons under § 303 of the ADA. Further on
20 information and belief, Plaintiff alleges that removal of each of the barriers
21 complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned
22 "readily achievable" under the standards §§ 301 and 302 of the ADA. As noted
23 hereinabove, removal of each and every one of the architectural barriers complained
24 of herein were also required under California law. In the event that removal of any
25 barrier is found to be "not readily achievable," Defendant still violated the ADA, per §
26 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and
27 accommodations through alternative methods that were readily achievable.
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28. On information and belief, Defendant has continued to violate the law and deny the rights of Plaintiff and other disabled persons to access this public accommodation since on or before Plaintiff's encounters, as previously noted. Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability in violation of the ADA or has reasonable grounds for believing that he is about to be subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

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1 WHEREFORE, Plaintiff prays that this court award damages and provide relief
2 as follows:

3 1. Issue a preliminary and permanent injunction directing Defendant as current
4 owner, operator, lessor, and/or lessee of the property and premises to modify the
5 above described property and premises and related facilities so that each provides full
6 and equal access to all persons, including but not limited to persons with physical
7 disabilities who use wheelchairs, and issue a preliminary and permanent injunction
8 directing Defendant to provide and maintain facilities usable by plaintiff and similarly
9 situated persons with disabilities, and which provide full and equal access, as required
10 by law, including appropriate changes in policy;

11 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied
12 that Defendant unlawful policies, practices, acts and omissions, and maintenance of
13 inaccessible public facilities as complained of herein no longer occur, and cannot
14 recur;

15 3. Award to Plaintiff all appropriate damages, including but not limited to
16 statutory damages, general damages and treble damages in amounts within the
17 jurisdiction of this Court, all according to proof;

18 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
19 costs of this proceeding as provided by law;

20 5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§
21 329

22 6. Grant such other and further relief as this Court may deem just and proper.
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24 ASCENSION LAW GROUP, PC

25 DATE: October 17, 2023

26 /s/Pamela Tsao

27 Pamela Tsao, attorney for Plaintiff

28 JOHN HO

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